

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 801 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNACHAND J SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioners
MR AJ DESAI ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE RAJESH BALIA.

Date of decision: 22/10/96

ORAL JUDGEMENT

1. The appellant is accused of Sessions Case No. 51 of 1991 in the Court of learned Additional Sessions Judge of Kheda at Nadiad. The matter came to be tried by learned Additional Sessions Judge. The appellant was

facing charges under Section 302, 498(A), 201 all of Indian Penal Code as also for an offence under Section 4 of Prevention of Dowry Act.

2. By his judgement dated 7.7.92, the learned Judge held the appellant guilty for offence under Section 302, 201 and 498(A) of the Indian Penal Code. He however acquitted the accused of offence under Prevention of Dowry Act.

3. The incident leading to the said conviction happened on 9.11.1990 in the residential home of the accused appellant and his wife - the victim. Her name was Shobhadevi. The time of occurrence is said to be between 4.30 - 5.00 p.m. They were staying in a tenement of Gunatirth Society in Nadiad. On the aforesaid date and time on finding that smoke is emanating from the house of accused appellant, neighbours rushed to the spot. On that day Gayatri Yagna was being performed and conclusion ceremony was about to happen.

4. The neighbours tried to enter into the house and finally they could manage to enter the house from backside from a window. It is in controversy whether the house was closed from within or not.

5. Almost charred body of said Shobhadevi was lying on the floor of the house. Accused was nowhere to be seen. Police came on the scene on being informed and investigation led to framing of charge sheet against the accused.

6. Before the trial court the witnesses examined were the usual doctor who performed the postmortem examination, Dr.Nirajkumar Gohil, P.W.1, Exh.7, then neighbours three in number were examined and all of them turned hostile. They are witnesses P.W. No.3 Himatlal Joshi, P.W.No.4 Dharmishhaben Parmar and P.W.5 Varshaben Kanubhai. As could be understood, the hostility to the prosecution was with regard to the involvement of the accused appellant.

7. The story of the prosecution as sought to be proved through the doctor was that the appellant had first throttled his wife Shobhadevi and thereafter to remove the trace of his crime she was burnt. As a result, there was also a possibility of the investigation being misled that death was not due to throttling but due to burning and hence a strong possibility of suicide.

8. The marital relationship was not very happy.

There were quarrels between the young couple. This is also a case of the prosecution that the accused appellant was demanding motor cycle, tape recorder, golden chain etc.

9. Three letters are produced on record. They are Exbs. 36 and 37 and there are three telegrams also on record, Exbs 31, 32 and 33. The last telegram is Exh.34. They were all brought on record through P.W.6, Exh.30 Rajesh Ramlakhan. The father of the deceased Radheshyam Sarjuprasad, P.W.7, Exh.35, page 157. The brother of the deceased Dudhnath Radheshyam, P.W.8 Exh.46 has also been examined.

10. So far as the post-mortem note on record is concerned (Exh.9), the striking feature is that in column No.18 as to the opinion of the doctor with regard to the injuries being antemortem, the answer written is in the negative. In the substantive evidence of the doctor Exh. 7, during cross-examination he has admitted that in view of the fact that the deceased had almost third degree burns all over the body and special test was required to determine as to whether burns were postmortem or antemortem and likewise whether the injuries antemortem or not.

11. So far as injuries are concerned, according to the doctor, there was no test on the throat of the deceased. Haryod bone was found broken. In view of this position of record so far as the appellant-defendant is concerned, first ground for placing the plea of suspicion as to the prosecution case having been proved beyond reasonable doubt is arising.

12. The next such ground is the authenticity of those letters whereby clearly the motive for the heinous crime on the part of the accused according to the prosecution is clearly established. Father Radheshyam Sarjuprasad has admitted in the cross-examination that he had known the boy, that is the accused, since his childhood and had seen him writing when he was at the age between 4 to 6 years. The accused at the time of the incident was aged about 22 years. On this slender foundation if the letters are held to have been proved it would indeed be a disaster.

13. This is not the only circumstance in his cross-examination. He has categorically stated that when the accused had come to take his wife Shobhadevi away with him. He had stated before this very witness that he has started staying separate from his parents and the

demands about those articles were only at the instance of his parents and he was not at all interested in it.

14. It was therefore argued on behalf of the appellant that assuming without admitting that the case of the prosecution is correct when the medical evidence is on the aforesaid line and in absence of any other material on record that the accused was in fact at the house when the incident occurred, the case of the prosecution against the accused becomes very much doubtful. It has already been noted that the neighbours have not supported the prosecution. The time of the incident being 4.30 5.00 p.m., ordinarily a working person would not be in the home. The accused is said to be carrying on the business of tailoring. It is not made clear on record by the prosecution whether the accused was running his business at his residence. In the absence of any such material and when the time of occurrence is one that ordinarily a person doing any work would be out of home inasmuch as there is no clear evidence establishing that the accused was present at the scene of incident, we agree with the submission of learned advocate Shri K.J.Shethna that the prosecution case is indeed doubtful, nor is it indicated by the prosecution that during these hours usually the accused used to be at his residence as a matter of practice or as a matter of course.

15. Coupled with this is the testimony of one of the panch witnesses who also happens to be the neighbour. It is P.W.3 Himatlal Joshi Exh.13. He has clearly stated that when he tried to enter from the front door he could not and therefore he went to the backside of the house smashing the glass open and thus got the entry. The Panchnama is silent about this and therefore learned Addl. Public Prosecutor Shri AJ Desai has strongly urged that neither the panchnama nor the panch witnesses have said anything about the house shown to be open from within.

16. In our opinion, thus reliance placed on behalf of respondent State is of no avail. Panchnama was drawn after the appellant arrived on the scene. Before that as per the say of P.W.3 Himatlal Joshi, the neighbours had already entered the house. The panchnama therefore, of course would be silent about it. On the contrary it was for the investigating officer to focus his attention pointedly on this aspect and try to ascertain whether the door was closed from outside or from within.

17. More so, when a young wife is found to be in a burnt condition, the police officer, with his experience, would

have immediately anticipated about the possible charge of murder, there would be possible defence of suicide and therefore the matter should have been investigated from that angle as well. If the house were even shut outside and there was material on record in that regard, it would have been very difficult for the accused appellant to explain the same.

18. Be that as it may, so far as the record is concerned in connection with the position of the house and particularly about the door being shut from within the position on the record is as stated above.

19. All told therefore, the prosecution in our opinion failed to bring home the charge against the accused beyond reasonable doubt.

20. We therefore allow the appeal, set aside the order of conviction and direct the accused to be set at liberty forthwith if not required for any other purpose. Fine if paid be refunded forthwith.

(devu)